

REMARKS

In the November 12, 2003 Office Action, all of the claims (i.e., claims 1-21) stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the November 12, 2003 Office Action, Applicants have amended claims 1, 4 and 11, and added new claims 22-31, as indicated above. Thus, claims 1-31 are pending, with claims 1 and 11 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Election of Species

In numbered paragraph 1 of the Office Action, Applicants' election without traverse of Figures 7-10, claims 1-21 in Paper No. 7 is acknowledged.

Rejections - 35 U.S.C. § 102

In numbered paragraphs 2-5 (pages 2 and 3) of the Office Action, claims 1-7, 9-14 and 19-21 stand rejected under 35 U.S.C. §102(b). In particular, claims 1-7, 9, 11-14 and 19-21 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,465,538 to Powers, Jr. (hereinafter "the '538 patent"), while claims 1 and 10 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,018,018 to Kosuge (hereinafter "the '018 patent"). In response, Applicants have amended independent claims 1 and 11 to more clearly define the present invention over the prior art of record.

In particular, independent claims 1 and 11, as now amended, require a lintel block having a rectangular base with a length longer than a maximum length of one of the blocks of the block wall and an opening formed in at least one end of the base member, first and second rectangular side members coupled to first and second first longitudinal sides of the base member and extending along the length of the base member to form a substantially U-shaped cross-section, and a plurality of spacers coupled between the side members. Independent

claims 1 and 11 further require a lintel block having a maximum height about as tall as a height of one of the blocks, and the side members being spaced apart from each other such that a maximum depth of the lintel block is defined by outer surfaces of the side members. Clearly, a lintel block with the unique structure set forth in claims 1 and 11 as well as the unique method of forming a lintel using such a lintel block as set forth in claim 11 are *not* disclosed or suggested by the '538 patent, the '018 patent or any other prior art of record.

The Office Action basically indicates that the '538 patent discloses all of the limitations of original claims 1-7, 9, 11-14 and 19-21, including a lintel 20 mounted in a block wall 12 using cementing slurring, the lintel 20 including a base 41, rectangular sides 34 and 37 with spacers 27 coupled between via mounting flanges 66. The Office Action further indicates that the '018 patent discloses a lintel block 1 with a rectangular base member, a pair of side members 2 and 3, a plurality of spacers 4 and first and second openings 5 in the base member, as required by original claims 1 and 10.

However, the lintel beam 20 of the '538 patent has a maximum depth defined by the edges of the base member 41, not the outer surfaces of the side members 34 and 37, as required by independent claims 1 and 11, as now amended. Moreover, the lintel beam 20 does not have a maximum height about as tall as a height of one of the blocks of the block wall. Furthermore, the base member 41 of the '538 patent lacks any openings formed therein.

With respect to the '018 patent, this so-called lintel block 1 is not longer than the blocks of the block wall, as set forth in claim 1 and 11. Moreover, the so-called lintel block 1 of the '018 patent lacks a rectangular base member with rectangular side members coupled to the longitudinal sides of the base member to form a substantially U-shaped cross-section. Rather, the so-called lintel block 1 of the '018 patent is very similar to a conventional cinder block that is the same size as the other blocks of the wall. Thus, the so-called lintel block 1 of the '018 is not adapted to be mounted above an opening in a block wall. In fact, if the so-called lintel of the '018 patent were mounted as a lintel above an opening in a block wall using cementing slurring, the cementing slurry would fall through the so-called lintel block 1.

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that claims 1 and 11, as now amended, are not anticipated by

the prior art of record. Accordingly, withdrawal of the rejections of independent claims 1 and 11 is respectfully requested.

Moreover, Applicants believe that the dependent claims 2-7, 9, 10, 12-14 and 19-21 are also allowable over the prior art of record in that they depend from either independent claim 1 or independent claim 11, and therefore are allowable for the reasons stated above. Also, the dependent claims 2-7, 9, 10, 12-14 and 19-21 are further allowable because they include additional limitations, which further distinguish the prior art of record in combination with the features of independent claims 1 and 11. Thus, Applicants believe that since the prior art of record does not anticipate the independent claims 1 and 11, neither does the prior art anticipate the dependent claims. Accordingly, Applicants respectfully request withdrawal of the rejections of the dependent claims 2-7, 9, 10, 12-14 and 19-21.

Rejections - 35 U.S.C. § 103

In numbered paragraphs 6-8 (pages 3-4) of the Office Action, claims 1, 8, 11 and 15-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over either the '538 patent or the '018 patent. In response, Applicants have amended independent claims 1 and 11 as mentioned above.

In particular, independent claims 1 and 11, as now amended, require a lintel block having a rectangular base with a length longer than a maximum length of one of the blocks of the block wall and an opening formed in at least one end of the base member, first and second rectangular side members coupled to first and second first longitudinal sides of the base member and extending along the length of the base member to form a substantially U-shaped cross-section, and a plurality of spacers coupled between the side members. Independent claims 1 and 11 further require a lintel block having a maximum height about as tall as a height of one of the blocks, and the side members being spaced apart from each other such that a maximum depth of the lintel block is defined by outer surfaces of the side members. Clearly, a lintel block with the unique features set forth in claims 1 and 11, especially as now amended, are *not* disclosed or suggested by the '538 patent, the '018 patent or any other prior art of record.

First, with respect to claims 1 and 8, the Office Action indicates that it is well known in the building art to weld connections. Thus, the Office Actions asserts that it would have

been obvious for one skilled in the art to modify the '538 patent and weld the spacer members, as required by claim 8. Applicants disagree with the position of the Office Action. However, Applicants believe the position of the Office Action with respect to claim 8 is moot in view of the amendments to independent claim 1.

Specifically, the lintel beam 20 of the '538 patent has a maximum depth defined by the edges of the base member 41, not the outer surfaces of the side members 34 and 37, as required by independent claim 1, as now amended. Moreover, the lintel beam 20 does not have a maximum height about as tall as a height of one of the blocks of the block wall. Furthermore, the base member 41 of the '538 patent lacks any openings formed therein. Thus, Applicants believe the '538 patent fails to disclose all of the limitations of independent claim 1. Applicants also believe there is no suggestion or motivation to modify the lintel beam 20 of the '538 patent to result in the unique arrangement of independent claim 1, as now amended.

Second, with respect to claims 11 and 15-18, the Office Action indicates that it is well known to provide walls with openings for windows and doors. Thus, the Office Action asserts that it would have obvious for one skilled in the art to provide an opening in the wall as taught by the '018 patent and install the block 1 above the opening since it is well within the skill of a worker in the art as a matter of obvious design choice. Applicants respectfully disagree with the position of the Office Action because (1) the block 1 is not longer enough to mount above a window or door as a lintel, and (2) the mortar used in the block wall of the '018 patent would fall out of the block 1 if mounted above an opening. Thus, Applicants believe there is no suggestion or motivation to make the modifications as suggested in the Office Action. In any case, Applicants believe the position of the Office Action with respect to claims 15-18 is moot in view of the amendments to independent claim 11.

Specifically, with respect to the '018 patent, this so-called lintel block 1 is not longer than the blocks of the block wall, as set forth in claim 11. Moreover, the so-called lintel block 1 of the '018 patent lacks a rectangular base member with rectangular side members coupled to the longitudinal sides of the base member to form a substantially U-shaped cross-section. Rather, the so-called lintel block 1 of the '018 patent is very similar to a conventional cinder block that is the same size as the other blocks of the wall. Thus, the so-called lintel block 1 of the '018 is not adapted to be mounted above an opening in a block

wall. In fact, if the so-called lintel of the '018 patent were mounted as a lintel above an opening in a block wall using cementing slurring, the cementing slurry would fall through the block 1. Thus, Applicants believe the '018 patent fails to disclose all of the limitations of independent claim 11. Applicants also believe there is no suggestion or motivation to modify the block 1 of the '018 patent to result in the unique arrangement of independent claim 1, as now amended.

It is well settled in U.S. patent law that the mere fact that the prior art can be modified does *not* make the modification obvious, unless the prior art *suggests* the desirability of the modification. Accordingly, the prior art of record lacks any suggestion or expectation of success for modifying the devices of the '358 and '018 patents to create the Applicants' unique arrangements of independent claims 1 and 11. Accordingly, withdrawal of the rejections of independent claims 1 and 11 is respectfully requested.

Applicants believe that the dependent 8 and 15-18 are also allowable over the prior art of record in that they depend from either independent claim 1 or independent claim 11, and therefore are allowable for the reasons stated above. Also, the dependent claims 8 and 15-18 are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not disclose or suggest the invention as set forth in independent claims 1 and 11, the prior art of record also fails to disclose or suggest the inventions as set forth in the dependent claims. Accordingly, withdrawal of the rejections of dependent claims 8 and 15-18 is also respectfully requested.

Prior Art Citation

In the Office Action, additional prior art references were made of record. Applicants believe that these references do not render the claimed invention obvious.

New Claims

Applicants have added new claims 22-31 by the current Amendment. New claims 22-31 depend from either independent claim 1 or independent claim 11. Thus, Applicants believe dependent claims 22-31 are allowable for the reasons discussed above regarding independent claims 1 and 11. Moreover, Applicants believe that new claims 22-31 are further

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allowable because they include additional limitations, which in combination with independent claims 1 and 11 are not disclosed or suggested in the prior art of record.

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In view of the foregoing amendment and comments, Applicants respectfully assert that claims 1-31 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested. If there are any questions concerning this Amendment, please feel free to contact the undersigned.

Respectfully submitted,



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